

ORIGINAL

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)

Merger of Qwest Communications)
International Inc. and)
U S WEST, Inc.)
_____)

CC Docket No. 99-272

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

COMMENTS OF COVAD COMMUNICATIONS COMPANY

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SUMMARY

U S WEST and Qwest (“Applicants”) have not met their burden of proof in this proceeding, and the Application should be denied or at least set for hearing to determine the critical facts necessary for the Commission to undertake its public interest analysis.

The Commission’s public interest analysis for license transfer proceedings is well-established, and it includes a complete and comprehensive competitive analysis of the transaction and whether the transaction would further the pro-competitive goals of the Communications Act, as amended by the Telecommunications Act of 1996. Applicants have sought to avoid this analysis simply by stating that their merger is “different” than other industry mergers in the past three years and that there is not a “material” overlap in the current service offerings of the two companies.

There are two problems with these arguments. First, Applicants provide no fundamental or underlying factual support for their statements that the overlap in the offerings of the companies is not “material.” Rather than provide facts to the Commission, Applicants are essentially daring the Commission to conduct its own investigation and conclude otherwise. This is not the type of Application that should be expected from the parties that have the burden of proof in this proceeding.

Second, these arguments are incorrect. This merger *is* different: because Qwest is an *announced and actual* entrant into U S WEST local markets. Tremendous resources have been invested by the Commission and commenters in the SBC-PacTel, SBC-SNET, SBC-Ameritech, Bell Atlantic-NYNEX, and Bell Atlantic-GTE mergers to determine whether the merging parties in those transactions chose to “merge rather than compete” with one another.

In this transaction, no such search for a “smoking gun” need be made—because an entire arsenal of smoking guns exists. Quite simply, Applicants admit that Qwest was entering U S WEST local markets, for both local dialtone services and advanced, high-speed data services. As Covad’s comments show, U S WEST’s markets are highly concentrated and significant barriers to entry remain. In this context, the merger of a significant actual (and previously-precluded) competitor clearly has a serious impact on competition.

In these Comments, Covad provides the Commission a story on the remaining barriers to entry in U S WEST’s local markets, from the perspective of a competitive, data CLEC focused upon providing services that utilize DSL technology. In Section III, Covad provides the Commission a list of several pro-competitive steps that Covad believes might help mitigate some of the competitive impact of this transaction. In particular, Covad proposes that the Commission:

- Order structural separation or divestiture of wholesale ILEC assets from all retail operations of the merged entity;
- Order improvements to U S WEST OSS for advanced services;
- Order and implement immediate revisions to U S WEST’s unbundled loop prices so that they fully comply with the Commission’s UNE pricing rules; and
- Order region-wide uniform installation intervals and incident-based liquidated damages for non-performance.

If the Commission decides to pursue merger conditions, Covad urges that Commission Staff be given the ability to release their draft merger conditions for public

comment, so as to avoid a situation in which Applicants draft legalistic and exception-laden draft conditions. In the end, the Commission would of course not be bound by Staff's recommendation; however, public review of Staff's draft conditions would afford maximum opportunity to ensure that the conditions be drafted with as much public input as possible.

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COMMENTS OF COVAD COMMUNICATIONS COMPANY

Pursuant to the Public Notice issued by the Commission on September 1, 1999 (DA-99-1775), Covad Communications Company ("Covad") respectfully submits these comments on the Applications of Qwest Communications International Inc. ("Qwest") and U S WEST, Inc. ("U S WEST") (collectively "Applicants") for authority to transfer control of U S WEST's licenses to Qwest. As described below, Applicants have simply failed to meet their burden of proof in this proceeding; at a minimum, the Commission should designate the Application for hearing, which would enable the relevant facts to be discovered. In the alternative, if the Commission deems it appropriate to approve the license transfers on the current application without hearing, Covad proposes a number of conditions that Covad believes may mitigate some of the public interest harms caused by the transaction.

I. APPLICANTS HAVE FAILED TO MEET EVEN THE MOST BASIC STANDARD OF PROOF IN THIS PROCEEDING

The standard for reviewing this Application is well established by Commission precedent. Like it or not, Qwest and U S WEST bear the burden of *proving* to the Commission that this transaction is in the "public interest." Rather than make the factual argument required by Commission precedent, Applicants have instead chosen to file a milquetoast and deficient Application, perhaps in the hope that the Commission—wary from the merger review process caused by the SBC-Ameritech, Bell Atlantic-GTE, AT&T-TCI and AT&T-MediaOne transactions—may simply wave this transaction through. That is

wishful thinking, because the Commission, under its own precedent, must engage in a comprehensive public interest analysis, which includes a review of the impact of the transaction upon actual and potential competition in relevant markets.

A. *The Commission's Merger Review Standard*

Applicants must affirmatively demonstrate, by a preponderance of evidence, that their proposed merger would serve the public interest.¹ The Commission has consistently applied this standard of proof in the variety of mergers in this industry since the 1996 Act.² In particular, the competitive impact of the transaction is the core of the Commission's analysis. Indeed, in the *BA-NYNEX Order*, the Commission stated that "[I]n order to find that a merger is in the public interest, [the Commission] must, for example, be convinced that it will enhance competition."³

In addition to the Commission's public interest authority, the Commission has Clayton Act authority to disapprove acquisitions of common carriers.⁴ Section 7 of the Clayton Act prohibits mergers whenever there is a reasonable probability that there would be less competition in a given market after a proposed merger, and "requires not merely an

¹ *Applications of NYNEX Corporation and Bell Atlantic Corporation for Consent to Transfer Control of NYNEX Corporation*, 12 FCC Rcd 19985 at ¶¶ 2-3 (1997) ("*BA-NYNEX Order*").

² See, e.g. *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc. to AT&T Corp.*, CS Docket No. 98-178, Memorandum Opinion and Order, FCC No. 99-24 (rel. Feb. 18, 1999) ("*AT&T-TCI Order*"); *In re Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, CC Docket No. 97-211, FCC 98-225, ¶¶ 8, 10 (rel. Sept. 14, 1998) ("*MCI-WorldCom Order*"); *Applications of Southern New England Telecommunications Corp. and SBC Communications, Inc. for Consent to Transfer of Control of Licenses and Section 214 Authorizations*, CC Docket No. 98-25, Memorandum Opinion and Order, 13 FCC Rcd 21292 (1998) ("*SBC-SNET Order*"); *In re application of Teleport Communications Group Inc., Transferor, and AT&T Corp., Transferee, for Consent to Transfer Control of Corporations Holding Point-to-Point Microwave Licenses and Authorization to Provide International Facilities Based and Resold Communications Services*, Memorandum Opinion and Order, 12 Comm. Reg. (P&F) 1095, ¶ 11 (rel. July 23, 1998) ("*AT&T-TCG Order*").

³ *BA-NYNEX Order* at ¶ 2; see also *AT&T-TCI Order* at ¶ 14; *MCI-WorldCom Order* at ¶¶ 9-12.

⁴ *MCI-WorldCom Order* at ¶ 8 n.23.

appraisal of the immediate impact of the merger upon competition, but a prediction of its impact upon competitive conditions in the future.”⁵

The Commission’s public interest analysis is not limited to traditional antitrust principles,⁶ because “competition is shaped not only by antitrust rules, but by the regulatory policies that govern the interactions of firms inside the industries.” As a result, the Commission’s analysis “also encompasses the broad aims of the Communications Act,” and that policy is “deeply rooted in a preference for competitive processes and outcomes.”⁷

A significant part of the Commission’s public interest competitive analysis is the examination of actual and potential competition. In the *BA-NYNEX Order* and subsequent decisions the Commission clearly outlined the competitive analysis framework that it utilizes in examining telecommunications mergers in the post-1996 Act environment.⁸ That framework includes an extensive review of “precluded competitors” and entry barriers, because the Commission recognizes that rigid adherence to existing market share analysis in the post-1996 Act environment would be insufficient in assessing the true competitive impact of a transaction. Under this framework, the argument that a merger between two companies that did not already compete with one another does not have any anticompetitive impact simply does not hold water—because the 1996 Act was about breaking down the barriers that prevented such entry. The Commission’s public interest framework was developed *precisely* because legal barriers had artificially restricted entry into telecommunications markets, and

⁵ *United States v. Philadelphia Nat’l Bank*, 374 U.S. 321, 362 (1963).

⁶ *See, e.g., Satellite Business Systems*, 62 F.C.C. 2d 997, 1069, 1088 (1977), *aff’d sub. nom United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980) (*en banc*).

⁷ *AT&T-TCI Order* at ¶ 14.

⁸ *See, e.g., AT&T-TCI Order* at ¶¶ 13-16; *SBC-SNET Order*, 13 FCC Rcd 21299-300 ¶¶ 15-17; *MCI-WorldCom Order*, 13 FCC Rcd at 10831-39 ¶¶ 10-22; *AT&T-TCG Order*, 13 FCC Rcd at 15245 ¶¶ 15-16; *BA-NYNEX Order*, 12 FCC Rcd at 19987-88 ¶¶ 2-3, 20008 ¶ 37.

the fact that a particular company may now have zero-to-little market share in a market has little, if any, utility in determining whether a particular transaction would have anticompetitive effects.

B. With Real Facts Notably Absent, Applicants Simply Have not met their Burden

Given this legal background, and with the burden of proof clearly upon them, Applicants should have presented to the Commission a comprehensive factual and economic competitive analysis of how the transaction would impact actual and potential competition in the markets that Applicants operate in. This analysis should have included an assessment of whether the transaction would eliminate any actual or significant potential competitor in any of those markets.

Nothing of the sort can be found in the Application. Indeed, all that is present is a series of unsupported factual assertions that essentially say that the two companies really don't compete much anyway (despite the fact that Qwest had announced deployment of xDSL services in direct competition to U S WEST's MegaBit DSL service) and that Qwest, because it is a long-distance carrier, is more interested in Section 271 authority than U S WEST was (as if compliance with Section 251 was voluntary).⁹

For instance, the Applicants do not even really define the relevant markets in which Qwest and U S WEST operate. This is a key threshold question for any competitive analysis. The Application's two-page competitive impact discussion oblique indicates five markets that Qwest and U S WEST have overlapping service offerings: (1) "frame relay and other data services"; (2) in-region local services; (3) in-region interLATA interexchange services;

⁹ As described below, Applicants' Section 271 argument must be examined in light of the Commission's ruling that a previous Qwest-U S WEST "marketing alliance" was unlawful and violated Section 271. *In the Matter of AT&T Corp., et. al v. Ameritech Corp., Qwest Communications Corp., and U S WEST Communications, Inc.*, File Nos. E-98-41, E-98-42, and E-98-43, Memorandum Opinion and Order, FCC 98-242 (rel. Oct. 7, 1998) ("*Qwest/U S WEST Marketing Alliance Order*").

(4) in-region intraLATA toll service; and (5) Internet access and other Internet-based services.¹⁰ However, the extent of the Qwest-U S WEST overlap in these “markets” is left entirely to the reader’s imagination and her willingness to trust Applicants’ unsupported assertions.

For each of these “markets,” significant questions remain to be answered. For instance,

Frame relay and other data services

- Applicants correctly states that Qwest has begun to provide DSL services in the U S WEST region (incidentally, by reselling Covad DSL service),¹¹ but no hard data is provided with regard to Qwest’s plans, intentions, or efforts to sell these competitive services and how those plans, intentions or efforts may very well change due to the transaction.
- In particular, to what extent does Qwest currently provide competitive, xDSL services in U S WEST territory in competition with U S WEST’s retail DSL services? How will the merger affect Qwest’s plans and incentives to sell non-U S WEST DSL services? Despite the Commission’s clear focus on promoting competitive entry into broadband markets, answers to these and other questions are notably absent from the filing.

¹⁰ Applicants do not demonstrate how these five putative markets would be determined by the market-definition process articulated by Commission precedent, which is based upon the demand-side analysis of the *DOJ/FTC Merger Guidelines*. By eliciting these five putative markets from Applicant’s discussion on pp. 12-13 of the Brief, Covad is trying to provide at least some semblance of a starting-point for Commission analysis. Covad does not necessarily believe that the *DOJ/FTC Merger Guidelines* would show this list to in fact be relevant markets.

¹¹ Applicants’ Brief at 13; Qwest, “Qwest launches Digital Subscriber Line Service,” Aug. 4, 1999, www.qwest.com/press/story.asp?id=140 (launching immediate availability in Seattle and future availability in Minneapolis, Phoenix, Portland, and Salt Lake City and mentioning covad and Rhythms NetConnections as data CLEC suppliers). Indeed, DSL plays a prominent role in Qwest’s current marketing—*see*

- To what extent do Qwest and U S WEST compete in providing “hi-cap” services (e.g., frame relay, point-to-point DS3, and OCx connectivity) to customers in U S WEST territory? These (local) services connect, for example, ISPs, other bandwidth-intensive consumers, and office campuses to Internet POPs, IXC POPs or similar locations. If Qwest currently does not provide these “hi-cap” services in U S WEST territory, to what extent did Qwest have any plans to offer these services in those service areas? Did such plans exist? If so, when did Qwest intend to provide those services? Have those plans now been put on-hold, pending the transaction?
- Although Applicants state that “no material overlap exists between Qwest and U S WEST outside the U S WEST region,”¹² Applicants concede that U S WEST provides “frame relay and other data services” to some customers out-of-region. What is Applicants’ definition of “material” and “limited”? Why have Applicants not provided any evidence or data to support their assertion that this overlap is not “material”?

In-Region Local Services

- Applicants concede that Qwest is “reselling” local services in the U S WEST region,¹³ but again no real facts are provided. How much reselling has occurred?

http://www.qwest.com/index_hi.html (Qwest home page contains hypertext link, “DSL—Change the Way You Do Business”); <http://cnms.qwest.net/dsl/> (Qwest DSL home page).

¹² *Id.* at 12.

¹³ Applicants’ Brief at 13.

- Applicants' statement that it was "exiting" the resale business line can be interpreted in two ways: (1) Qwest may have had plans to convert resold local customers to a UNE-based network; or (2) Qwest may have simply decided to exit entirely the local market. Which of those two interpretations is correct? When did Qwest make the decision to "exit" the local resale business line? Did the merger (or proposal for the merger) have any impact upon that decision—i.e., did Qwest decide that it would be better to merge rather than compete with U S WEST? Did regulatory developments have any impact upon that change in business plan? Did U S WEST's record of (non)compliance with Section 251 have any impact upon Qwest's decision to "exit" the CLEC market and instead decide to buy U S WEST?
- Did Qwest have any plans to collocate equipment in U S WEST central offices to address these local customers? To what extent did those plans change because of the merger?

In-Region interLATA Interexchange Services

- How significant or large is Qwest's interLATA customer base in U S WEST states? It is axiomatic that having long-distance customers provides an incentive for the IXC to "build down" into local markets for those customers, simply to deflect access charge payments to the ILEC.
- How should the Commission's judgment on the impact on competition in this market by this merger be affected by its ruling last year that a U S WEST-Qwest long distance marketing alliance (which signed up 130,000 customers in four weeks) violated Section 271 because it allowed U S WEST to

“compete prematurely in the in-region, interLATA market.”¹⁴ Given

Applicants’ previous attempt to end run Section 271 of the Act, the Commission should in this transaction review in great detail the Qwest in-region interLATA divestiture plan. The cursory statements in the Application are clearly deficient.

- For example, to what extent would Qwest’s proposed divestiture or transfer of those customers impact consumers of interLATA “hi-cap” services?

In-region intraLATA toll service

- In which states and LATAs do Qwest and U S WEST compete in providing intraLATA toll? When did Qwest begin to offer intraLATA toll service in those states or LATA?

- What are the relevant market shares in those states or LATAs?¹⁵

“Internet Access and Other Internet-based services” (Brief at 13)

- While Applicants state that they will reconfigure these Internet services to comply with Section 271, Applicants fail to describe whether or how they will re-configure these services to come into compliance with other relevant applicable rules, such as CEI/ONA, *Computer II/III*, and Section 274 (electronic publishing).

These are complicated and factually-intensive questions that are simply glossed-over by Applicants. Terse and unsupported statements are simply not acceptable in this context,

¹⁴ *Qwest/U S WEST Marketing Alliance Order* at ¶ 44. In that proceeding, the Commission specifically found that “U S WEST’s premature entry into the long distance market [through the marketing alliance with Qwest] is unlawful” and needed to be enjoined. *Id.* at ¶ 51.

¹⁵ Applicants state that Qwest provides a “minimal” amount of intraLATA toll service. Brief at 13. However, we are not treated to a definition of what “minimal” means.

and the Application is far short of the sophisticated analysis the Commission should expect from a party that has the burden of proof.¹⁶ For this reason alone, the Commission should dismiss the Application as patently defective. In the alternative, the Commission should designate this Application for hearing, so that it and other parties may discover for themselves whether facts support the Application.

II. THE STATUS OF LOCAL COMPETITION IN U S WEST TERRITORY CALLS FOR IMMEDIATE ACTION

Had Applicants taken the time to provide the Commission a sophisticated competitive analysis, it would have revealed some very telling results. With regard to local markets in the U S WEST region, competitive entry is still scant and scarce. As a result, the merger with an *actual* competitive entrant in these markets—Qwest—would have a clear impact upon competition. These anticompetitive impacts can only be remedied through aggressive and immediate market-opening steps.

A. Qwest is a Significant Actual Competitor in U S WEST Markets

With regard to the high-speed data (which includes DSL) and local services markets (somewhat) described by Applicants,¹⁷ Qwest is an actual entrant in U S WEST local markets. As discussed above, applicants admit that Qwest has begun to sell xDSL services that compete with U S WEST's MegaBit DSL service and that Qwest has announced plans to sell that DSL service in Seattle and "several additional markets" in the U S WEST region by

¹⁶ BA-NYNEX Order at ¶ 37.

¹⁷ As described above, Covad's discussion of the "high-speed data" and "local services" markets is based gleaning these two purported market definitions from pp. 12-13 of Applicants' Brief. As described in Section I, Applicants have not tried to engage in an economic analysis of those markets to determine whether those are in fact the proper market definitions for the Commission's analysis. For this reason alone, the Application should be denied or set for hearing. Nevertheless, in order to present a complete summary of the issues in this Petition, Covad is utilizing Applicant's supposed market "definitions" to explain the impact upon competition that the merger presents. In no way should Covad's use of these terms indicate that Covad believes that these are properly-defined product or service markets.

the end of 1999.¹⁸ Applicants also admit that Qwest has resold “local services” (presumably dialtone) in the U S WEST region,¹⁹ but evidence of the extent of that entry is notably absent from the Application.

In the *BA-NYNEX Order*, the Commission articulated the standard under which it would consider whether a company was a “significant potential competitor” in a telecommunications market. In particular, the Commission looks to whether a potential entrant has “capabilities and incentives to compete most effectively and soonest in the relevant market.”²⁰ These capabilities include access to necessary facilities, “know how”, brand name recognition, existing customer relationships, financial resources, and operational infrastructure, which includes sales, marketing, including customer service, billing and network management resources.²¹

There is no doubt that Qwest—a multi-billion dollar competitive telecommunications company headquartered in Denver just down the street from U S WEST’s headquarters—possesses many, if not all of, these assets. Indeed, with regard to high-speed data services, Qwest is an announced and *actual* competitor in the U S WEST region—local markets that are, as described below, highly concentrated. As the Commission did in the *BA-NYNEX*, *MCI-WorldCom*, *AT&T-TCI*, and *SBC-SNET* mergers, it must consider the impact of the

¹⁸ Applicants’ Brief at 13; *see* Qwest, “Qwest Launches Digital Subscriber Line Service,” Aug. 4, 1999, www.qwest.com/press/story.asp?id=140 (announcing immediate availability of data CLEC-provided DSL in Seattle and availability in Minneapolis, Phoenix, Portland, and Salt Lake City by the end of 1999).

¹⁹ In the *BA-NYNEX Order*, the Commission identified “local exchange and exchange access” as a relevant product market, and further distinguished that market by reference to three categories of consumers: residential and small business consumers, mid-sized businesses, and large business/government users. *BA-NYNEX Order* at ¶¶ 51-53. Applicants have not provided enough information in their Application to indicate to what extent Qwest had penetrated any of these customer classifications in US WEST service territories—yet another reason for dismissing the Application or designating it for a hearing.

²⁰ *BA-NYNEX Order* at ¶ 62.

²¹ *Id.*

transaction from the perspective of Qwest being both an actual and precluded potential competitor in U S WEST markets.

From this perspective, this merger *is* different than SBC-Ameritech and Bell Atlantic-NYNEX. In those mergers, neither RBOC had overlap with the other RBOC in local dialtone or advanced services, and the key issue in those proceedings was the presence of “potential” or “precluded competition.” In contrast, the Qwest/U S WEST merger would remove an *actual* local competitor in these markets—an actual local competitor that was precluded from the market prior to the 1996 Act and which had only just begun to provide competitive local services in the U S WEST region. This is a story of a firm that deliberately chose to buy a monopoly position rather than compete in the market. As a result, the Commission should view this merger with at least as much, if not more, scrutiny than those two RBOC-RBOC transactions.

B. Analysis of Competition in the U S WEST Region

In order to determine whether the loss of a significant actual (or precluded) competitor from U S WEST’s ILEC service area, the current status of entry in these markets is critical. Again, since Applicants have failed to provide any data that would permit a market share and entry barrier analysis—the two critical ingredients of the Commission’s public interest review—further examination of these issues and the facts is clearly needed. Publicly available facts and Covad’s experience in entering five geographic regions in U S WEST’s territory (Seattle, Portland, Minneapolis, Denver, and Phoenix) make it clear that the development of a fully open and competitive market in those regions is *far* from being a reality. Indeed, while progress has been made on several fronts (particularly, in recent months, collocation), the keys to the development of broadband, xDSL entry are far from in place. As a result, the lost of a significant, actual (or precluded) entrant of Qwest’s stature

and resources—in particular, an extensive sales force that would have been deployed to sell competitive xDSL service that now presumably will be hawking the wares of a monopolist—is likely to have a significant adverse impact on the development of competition in the market for high-speed data services. In Section III, Covad suggests several remedial measures that the Commission should explore that may mitigate some of these anticompetitive effects.

1. Market Share Analysis: U S WEST Remains a Monopoly

A key component of competitive analysis is an examination of market share. Several recent Commission reports clearly indicate that U S WEST retains near-total control over the access lines in its service territories. For example, the extent of entry in U S WEST's states shows that the U S WEST region lags far behind entry into other RBOC regions.

Table 1. Lines Provided As Total Service Resale (TSR)

	<u>Total Switched Lines</u> (thousands)	TSR Lines (thousands)	<u>Percent</u>
Ameritech	21,054	450	2.1
Bell Atlantic	41,429	619	1.5
BellSouth	24,104	543	2.3
SBC	36,778	823	2.2
U S West	16,695	149	0.9

As of December 31, 1998 (latest data available)

Source: Industry Analysis Division, Common Carrier Bureau, FCC, *Local Competition: 1999*, Table 3.2 (Rev.)

Table 2. Lines Provided as UNEs

	<u>Total Switched Lines</u> (thousands)	UNE Lines (thousands)	<u>Percent</u>
Ameritech	21,054	100	.5
Bell Atlantic	41,429	91	.2
BellSouth	24,104	41	.2
SBC	36,778	67	.2
U S West	16,695	8	.00479

As of December 31, 1998 (latest data available)

Source: Industry Analysis Division, Common Carrier Bureau, FCC, *Local Competition: 1999*, Table 3.3 (Rev.)

There can be no doubt, then, as to why Applicants have refrained from describing local market conditions in the U S WEST region—because such a discussion would have revealed the extent to which U S WEST has failed to implement completely the interconnection, unbundling and resale provisions of Section 251 of the 1996 Act.²²

Perhaps one of the reasons for the rather trifling amount of current entry in U S WEST territories can be explained by the monthly loop charges that U S WEST assesses new entrants like Covad. As shown by Table 3 below, these monthly loop rates—especially for loops longer than 18,000 feet, where U S WEST assesses an “extension charge”— are oftentimes much *higher* than U S WEST’s retail DSL rates.

Table 3. The Price Squeeze: Monthly Loop Rates in U S WEST States Compared to U S WEST Retail DSL Services

U S WEST State	2 wire loop (per month)	ISDN Loop (per month)	U S WEST Retail DSL (per month)
Arizona	\$21.98 +\$6.75/mth for extensions	\$21.98 +\$6.75/mth for extensions	256k Select: \$19.99 256k Deluxe: \$29.99 MegaOffice: \$62.40 MegaBusiness: \$76.80 Megabit: \$120-840
Colorado	Deaveraged Rates: \$19.65 \$26.65 \$38.65 \$84.65 +\$20.13/mth for extensions	Deaveraged Rates: \$19.65 \$26.65 \$38.65 \$84.65 +\$20.13/mth for extensions	256k Select: \$19.99 256k Deluxe: \$29.99 MegaOffice: \$62.40 MegaBusiness: \$76.80 Megabit: \$120-840
Iowa	\$12.72 +\$26.87/mth for extensions	\$12.72 +\$26.87/mth for extensions	256k Select: \$19.99 256k Deluxe: \$29.99 MegaOffice: \$62.40 MegaBusiness: \$76.80 Megabit: \$120-840

²² Indeed, the Application even seems to admit the fact that U S WEST could do a lot more to come into compliance with the 1996 Act. In several places, Applicants state that Qwest-U S WEST will have “more incentives to satisfy Section 271” (e.g., Brief at 17)—implicitly conceding that the current incentive U S WEST possesses is not sufficient to implement the 1996 Act fully. Consider, however, the fact that compliance with the Section 271 “checklist” requires little more than prove that Section 251 has actually been implemented. Therefore, while Applicants’ Section 271 incentive argument may, in fact, be true, the argument does little else but admit that U S WEST is not now in compliance with the 1996 Act.

Idaho	\$38.83 +\$24.59/mth for extensions	\$25.52 +\$24.59/mth for extensions	256k Select: \$19.99 256k Deluxe: \$29.99 MegaOffice: \$62.40 MegaBusiness: \$76.80 Megabit: \$120-840
Minnesota	\$12.03 + \$6.75/mth for extensions	\$12.03 + \$6.75/mth for extensions	256k Select: \$19.99 256k Deluxe: \$29.99 MegaOffice: \$62.40 MegaBusiness: \$76.80 Megabit: \$120-840
Montana	\$27.41 +\$29.38/mth for extensions	\$27.41 +\$29.37/mth for extensions	256k Select: \$19.99 256k Deluxe: \$29.99 MegaOffice: \$62.40 MegaBusiness: \$76.80 Megabit: \$120-840
Nebraska	\$28.15 +\$20.55/mth for extensions	\$25.95 +\$20.55/mth for extensions	256k Select: \$19.99 256k Deluxe: \$29.99 MegaOffice: \$62.40 MegaBusiness: \$76.80 Megabit: \$120-840
North Dakota	\$19.75 +\$22.67/mth for extensions	\$19.75 +\$22.67/mth for extensions	256k Select: \$19.99 256k Deluxe: \$29.99 MegaOffice: \$62.40 MegaBusiness: \$76.80 Megabit: \$120-840
New Mexico	\$19.49 \$21.30 \$26.74 +\$16.83/mth for extensions	\$21.21 +\$16.83/mth for extensions	Not Available
Oregon	\$15.00 +\$25.54/mth for extensions	\$15.00 +\$25.54/mth for extensions	256k Select: \$19.99 256k Deluxe: \$29.99 MegaOffice: \$62.40 MegaBusiness: \$76.80 Megabit: \$120-840
South Dakota	\$21.09 +\$26.87/mth for extensions	\$26.14 +\$26.87/mth for extensions	256k Select: \$19.99 256k Deluxe: \$29.99 MegaOffice: \$62.40 MegaBusiness: \$76.80 Megabit: \$120-840
Utah	\$22.97 +\$19.66/mth for extensions	\$22.97 +\$19.66/mth for extensions	256k Select: \$19.99 256k Deluxe: \$29.99 MegaOffice: \$62.40 MegaBusiness: \$76.80 Megabit: \$120-840
Washington	\$12.74 +\$24.45/mth for extensions	\$12.74 +\$24.45/mth for extensions	256k Select: \$19.99 256k Deluxe: \$29.99 MegaOffice: \$62.40 MegaBusiness: \$76.80 Megabit: \$120-840
Wyoming	\$29.54 +\$27.32/mth for extensions	\$25.11 +\$27.32/mth for extensions	256k Select: \$19.99 256k Deluxe: \$29.99 MegaOffice: \$62.40 MegaBusiness: \$76.80 Megabit: \$120-840

Source: Covad-US WEST Interconnection Agreements; U S WEST WWW site.

Compared to U S WEST's retail DSL rates, these loop rates demonstrate vividly the problems that data CLECs face in U S WEST territory.²³

As described by Covad in its June 15, 1999 Comments in the *Advanced Wireline Services* proceeding, U S WEST can only get away with this price squeeze because its DSL tariffs permit it exclusive access to "line sharing", in which U S WEST can offer DSL "on top of" an existing voice line without the DSL service making any contribution to the nonrecurring cost of the local loop facility.²⁴ As described below, U S WEST has denied competitive DSL carriers like Covad nondiscriminatory access to line-sharing—as a result, U S WEST's DSL service is the *only* DSL service that can take advantages of these economies of scope.

In conclusion, the facts speak for themselves. The rather trifling amount of competitive entry in U S WEST service areas indicates that these local markets are highly concentrated, with U S WEST having a predominant, *de facto* monopoly share. And little wonder why entry has been slow to occur: the monthly recurring loop rates in U S WEST territories and U S WEST's refusal to line-share indicates ominously that competitive mass market, residential broadband services are a long way off.

²³ Table 3 also clearly demonstrates that several states in the U S WEST region have not fully implemented the Commission's UNE pricing rules. For instance, most states have not adopted geographically de-averaged local loop rates, as required by Commission Rule 51.507(f). In addition, the presence of "extension charges" is contrary to the "efficient network configuration" requirements of Commission Rule 51.505(b)(1). These extension charges—like other loop conditioning charges—are not based upon a most-efficient, forward looking network design for a loop but are instead an attempt to impose actual-cost pricing upon competitive entrants. As Covad described in its Comments in the UNE Remand Proceeding, a most-efficient, forward looking network design TELRIC methodology would not distinguish between "long" or "short" loops, or whether any particular loop needs conditioning or not. See Comments of Covad Communications Company, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, May 26, 1999.

²⁴ Comments of Covad Communications Company, *In re Deployment of Wireline Telecommunications Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, June 15, 1999.

2. Entry Analysis: Substantial Barriers to Entry Remain

As recognized by precedent, the Commission's competitive analysis does not end simply with an analysis of market share but continues on to discuss whether substantial economic or operational barriers to entry into these markets exist. The purpose of this entry analysis is to examine whether the competitive impact of eliminating one competitor in a market would or would not be mitigated by further entry. That is, eliminating a competitor in a market where entry is difficult has a much more serious anticompetitive effect than eliminating a competitor in a market where entry is relative easy. Once again, the Application is woefully deficient in presenting facts or arguments on this matter.

With regard to the putative "high-speed data" market, of which DSL seems to be a part,²⁵ three key barriers to entry exist: the collocation process, access to critical UNEs (including loops, line sharing, remote terminals, sub-loops, and OSS), and actual on-time loop provisioning performance. An examination of the facts reveals that U S WEST has not removed all of these barriers to entry. Indeed, entry into this market is difficult—as a result, the elimination of an actual competitor (Qwest) is likely to have significant adverse competitive effects in this market.

Collocation. Covad believes that U S WEST's provisioning of cageless collocation to Covad comes closest to the Commission's March 31 Order in the *Advanced Wireline Services* proceeding. To the best of Covad's knowledge, U S WEST was the first ILEC to provide cageless collocation, beginning in early 1998 in the State of Washington. Since then, Covad has received cageless collocation arrangements in dozens of U S WEST central offices in Seattle/Puget Sound, Portland, Denver, Minneapolis, Phoenix, Salt Lake City and

²⁵ See Note 11. In using this term in this Petition, Covad does not necessary accept whether such a market is a properly-defined market for competitive analysis.

Albuquerque. Although there have been and continue to be legal and operational glitches along the way, Covad and U S WEST have been able to resolve these issues without frequent resort to legal dispute resolution processes.

Therefore, while improvements in U S WEST's collocation process can (and should) be made, it does appear that this one barrier to entry is being lowered. However, as described below, several other significant economic and operational barriers remain.

Access to Loops, Line Sharing, and Remote Terminals. As described in Table 3, from an economic perspective, the price of loops in U S WEST states, combined with U S WEST's refusal to provide access to line sharing, presents a formidable barrier to any CLEC that wishes to provide a competitive xDSL product. Table 3 speaks for itself—it is simply impossible for Covad to provide an xDSL service that competes with U S WEST's \$19.99/mth DSL service in, for example, Utah, where the monthly loop rate is \$22.97. The denial of line sharing to data CLECs like Covad simply means the denial of a competitive alternative to consumers of U S WEST's monopoly DSL service.

In addition to high loop rates and lack of access to line sharing, U S WEST also does not provide CLECs nondiscriminatory access to remote terminals and/or sub-loop elements. Access to remote terminals and sub-loop elements is absolutely critical to ensuring that next-generation DSL technology over fiber-fed loops (such as VDSL) be available to consumers on a competitive basis. Remote terminal access has immediate competitive significance, because U S WEST has already begun to trial and deploy VDSL technology at fiber-fed remote terminals in Arizona.

Covad realizes that DSL line sharing and access to unbundled loops, remote terminals, and sub-loop elements are the subjects of on-going Commission proceedings.²⁶ Covad has no desire to re-litigate the merits of the availability of those essential ingredients in the context of the merger. However, it is important that the Commission assure itself that U S WEST is in full compliance with those rules in its review of this Application, including rules that may become effective after the date of the filing of this Application.

To the extent that new Commission rules become effective while this Application is pending, the Commission should: (1) afford Applicants an opportunity to amend their Petition to demonstrate that U S WEST has come into compliance with the new rules; and (2) not act upon this Application until it is satisfied that Applicants have actually come into compliance with those rules.²⁷ Fundamental fairness to Applicants dictates the first step; fundamental fairness to the development of competition and respect for Commission rulemaking authority dictates the second step.

OSS. U S WEST's OSS for xDSL services also slow the provisioning process and act as a barrier to competition. U S WEST does not provide electronic flow-through order processing for loops. To the contrary, U S WEST requires that Covad maintain separate computer terminals, connected via analog modem to U S WEST, through which Covad must place loop orders. This requires Covad to engage in the manual process of taking

²⁶ Based upon the Commission's Press Release in the *UNE Remand* proceeding (CC Docket No. 96-98, rel. Sept. 15, 1999), it appears that the Commission has ordered that ILECs provide CLECs access to remote terminals and sub-loop elements, although the final order has not been released as of this writing.

²⁷ It is certainly within the Commission's public interest authority to satisfy itself that Applicants are in compliance with Commission rules at the time an Application is granted. Indeed, to take the opposite position would have potentially absurd results. For example, if an applicant applied for a broadcast license and then accepted foreign citizenship before the Commission acted, the Commission would not approve the application on the theory that at the time the application was filed the applicant was in compliance with Section 310(b) of the Act. Similarly, if unbundled access rules change while this Application is pending, and if Applicant's compliance with those unbundling rules is important to the Commission's competitive analysis, the Commission should insist that Applicants supplement the record on this point in the course of the proceeding.

information from the orders Covad receives electronically and re-inputting that information into the separate U S WEST terminal.

Similarly, U S WEST's current OSS does not provide pre-order access to the loop makeup information necessary to determine whether a line is capable of supporting DSL technologies. Importantly, U S WEST *does* have pre-order access to this information when it provisions its own DSL service. While U S WEST says that new versions of its ordering system will have this capability, Covad has not seen this updated system yet. The lack of electronic, flow-through access to this information drastically slows down the Covad ordering and provisioning process and requires Covad to submit expensive and time consuming supplemental orders and order cancellations that would be unnecessary if U S WEST's OSS was adequate.

Actual Performance in Loop Deliveries. Perhaps the largest operational barrier Covad currently faces in its dealing with ILECs today is ensuring that Covad's loop orders be completed on a nondiscriminatory and timely basis. No issue is more critical to a fledgling entrant than customer service—which, in Covad's business, begins with the timely installation of a customer's xDSL line.

U S WEST's provisioning of loops to Covad requires substantial improvement. Covad operates DSL networks in twenty-two metropolitan markets (including all the RBOCs and GTE), and U S WEST has the highest percentage of "held orders" of any ILEC. A "held order" is one which U S WEST removes from the normal provisioning cycle for one of any number of reasons. When an order goes "held," U S WEST refuses to tell Covad when the order might be filled. In other words, there is no interval within which U S WEST must resolve the problem that led to the order becoming held. U S WEST has held some Covad orders for 89 days or more before completing them.

The single largest reason for orders becoming held is that U S WEST claims not to have loops available for Covad to lease. As shown by Table 4, below, most held orders result from U S WEST not having available pairs in the F1 or feeder portion of the outside plant. When a feeder cable no longer has available pairs, Covad is prevented from reaching any of the thousands of customers served by that feeder cable. The second most common reason for an order to be held is a claim by U S WEST that it has no available loops in the F2 or distribution part of the outside plant. Again, the lack of an available pair in the distribution cable indicates that there are hundreds of customers that cannot be served by Covad.

The apparent lack of available facilities in the U S WEST region cause Covad to cancel many loop orders without recourse. Indeed, U S WEST also has a special order designation—the “local market” designation—that indicates that U S WEST has no plans to add any facilities in the area served by the loop Covad ordered. When U S WEST gives Covad a “local market” response, Covad essentially must cancel the loop order because there is no hope that Covad will receive a loop any time in the foreseeable future.

Table 4. Covad Loop Delivery Experience in U S WEST (Aug-Sept 1999)

Date	Percentage of Covad's total orders placed in "held" status by U S WEST	Percentage of "held orders" held for lack of available pairs in the F1 or feeder cable	Percentage of "held orders" held for lack of available pairs in the F2 or distribution cable	Percentage of "held orders" held for lack of available pairs in the F3 or second distribution cable	Percentage of "held orders" held for local markets	Percentage of "held orders" held for other reasons
As of 8/25/99	39.8%	48.3%	20.7%	1.2%	2.1%	27.7%
As of 9/16/99	38%	53%	21.7%	1.4%	2.6%	21.3%

As Table 4 shows, U S WEST places nearly 40% of all Covad loop orders into "held order" status, meaning that Covad has little or no chance of receiving those loops within 15 business days. As a result, U S WEST's average delivery interval for the loops it has delivered to Covad to date is 16.5 days, and it takes U S WEST 11 or more business days to supply a loop 79% of the time. U S WEST requires more than 25 business days to provide a loop in response to 13.2% of Covad's orders.

This service is not at parity to U S WEST's retail DSL product. U S WEST recently told the Minnesota Public Service Commission that it provides retail MegaBit DSL customers service within 10 business days.²⁸

Aside from more-traditional problems with U S WEST's wholesale delivery systems,²⁹ Covad believes that the lack of DSL line sharing is fundamental to this lack of parity. U S WEST's exclusive access to DSL line sharing (in which the DSL service shares the same loop that carries an existing analog voice service) means that U S WEST can provide DSL when there is a shortage of existing copper loops that CLECs cannot access. As long as data CLECs like Covad are required by U S WEST to obtain a stand-alone loop, CLECs will be directly and discriminatorily hindered by facilities issues that U S WEST's retail DSL operation, which line shares on an exclusive basis, does not face.

Summary: Substantial Barriers to Entry Remain. In the end, substantial barriers to entry with regard to high-speed data services in U S WEST territories exist and remain. U S

²⁸ See U S WEST response to Minnesota Department of Commerce Data Request 10 in Minnesota Public Utilities Commission Docket No. P-999/CI-99-678.

²⁹ For example, the lack of pre-order access to loop make-up information (the DLR, or Design Layout Record) means that Covad is unaware of the physical plant make-up (loop length, presence of load coils, etc.) at the time it submits an order. U S WEST's retail DSL operation faces no such issue.

WEST's combination of high loop rates, its refusal to provide DSL line sharing, its inadequate OSS, and its discriminatory loop installation performance make every day a living adventure for CLECs like Covad.

As a result, losing the substantial marketing resources of Qwest to U S WEST's MeagBit DSL services could have a significant impact on the success of competitive entrants in U S WEST territory. This is a very real adverse competitive impact of the transaction utterly ignored by Applicants.

3. Conclusion: The Merger Would Have an Adverse Impact on Competition

Applicants have not provided this Commission with even a cursory competitive analysis that the Commission needs to make a public interest determination. However, a simple look at the *actual facts* of the competitive situation in U S WEST territory reveals that this transaction poses a threat to both actual and potential competition.

As discussed above, Qwest is a significant, actual (and precluded) competitor in the U S WEST region. Even under Applicant's cursory definition of markets ("local services" and "high-speed data"), it is obvious that Qwest, a company headquartered in U S WEST's region with a large and effective sales force (in part from its LCI acquisition), possesses substantial and even unique retail capabilities. Moreover, Applicants admit that Qwest was an *actual entrant* into the (obliquely-defined) "local services" and "high-speed data" markets in U S WEST territory.

Elimination of Qwest as an aggressive entrant in the U S WEST territory will have an adverse impact upon competition. Local markets in U S WEST territory are extremely concentrated—indeed, Commission reports indicate that U S WEST's markets have *less* competition than any other RBOC region. A standard entry analysis also reveals that U S

WEST has not succeeded in removing the economic and operational barriers to entry in data markets. While U S WEST has made improvements in its collocation provisioning, it does not provide loops on a timely or reliable basis. Finally, U S WEST continues to deny Covad access to DSL line sharing, remote terminals, sub-loop elements, or sufficient OSS. Since entry into U S WEST local markets continues to be difficult, the loss of a significant actual competitor like Qwest is likely to have adverse competitive impact.

In short, the standard competitive analysis for license transfer proceedings indicates that this transaction presents substantial competitive problems.

III. PROPOSED PRO-COMPETITIVE MEASURES OR CONDITIONS

As discussed above, Covad believes that the Commission should deny the Petition or designate it for hearing, on the grounds that Applicants have not provided sufficient information to satisfy their burden of proof that the transaction is in the public interest. Applicants have not provided data or proof of the competitive impact of this transaction, and have only provided unsupported and unsubstantiated assertions of their views. By denying the Application immediately, the Commission would give the Applicants a "second chance" in presenting their burden. In the alternative, designating this Application for hearing would give parties the ability to find the facts directly from Applicants, through issuance of discovery and live testimony.

If the Commission rejects those two alternatives and instead decides to consider merger conditions, Covad suggests that the following conditions would vitiate at least some of the anticompetitive effects of the transaction. In particular, the Merger Order should, at a minimum:

1. *Order structural separation or divestiture of the wholesale ILEC assets from all retail operations of the merged entity.*

- Applicants' retail operations would have to obtain services and elements (in particular, collocation, unbundled loops, DSL line sharing, remote terminal access, sub-loop elements, and OSS) from the wholesale ILEC entity in the *same manner* as competitive carriers like Covad do. The Merged Entity's retail side must impute to itself the full costs of collocation, unbundled loops, DSL line sharing, etc. that a similarly-situated CLEC would face.
- Structural separation is the best enforcement mechanism the Commission would have to ensure that access to the essential services and elements remains nondiscriminatory. Covad strongly believes that as long as CLECs have to go through "separate" processes or OSS to order wholesale services, CLECs will never receive "equal" treatment.
- Structural separation would also ensure that upgrades to U S WEST's outside plant (which is needed) will be undertaken in response to CLEC demand as well as U S WEST's retail needs. True parity means that CLEC deployment options should not be limited to areas where U S WEST believes it has a retail interest—creation of a "Loop Company" would ensure that true parity happens.
- Until the Commission approves the structural separation plan and structural separation is fully implemented, the Merged Entity must: (1) be prohibited from signing up new line-sharing DSL customers; and (2) be required to offer a 25% discount on access to all OSS, collocation, and unbundled network elements. Transition to structural separation needs to be swift and certain for this enforcement remedy to have its intended effect; these transitional measures will help ensure that U S WEST/Qwest implement this separation rapidly and completely.
- Divestiture would have the additional benefit that the retail operations of the merged entity be "network agnostic." For example, the retail operations would purchase DSL or dialtone services from the "best" network provider. As a result, CLECs in the U S WEST region would have the opportunity to have Qwest/U S WEST resell *their* services—a process that could greatly de-concentrate local markets.
- Divestiture would also ensure that Qwest and U S WEST not engage in a repeat performance of the "end run around the 1996 Act" that the Commission enjoined last year when U S WEST Qwest attempted to avoid section 271 obligations by "jointly marketing" a long distance service.

2. *Order improvements to U S WEST OSS for advanced services*

- These improvements would include direct pre-order and order electronic access to loop information databases.
- Changes to the LFACS and other computer support systems necessary to implement DSL line sharing fully.
- Manual processes would be automated over time; until those processes are automated, access to manual systems will be provided at a 25% discount.

3. *Order and Implement immediate revisions of unbundled loop pricing elements to comply with FCC UNE Pricing Rules*

- Table 3 demonstrates above that most U S WEST states have not yet implemented geographic deaveraging of unbundled loop rates, which is required by Commission Rules.
- In addition, Covad believes that the imposition of additional charges for “long” loops is inconsistent with the Commission’s TELRIC pricing methodology, which requires that loops *not* be priced according to their actual historical and physical characteristics but that they be priced on a “most-efficient, forward looking network design” methodology. A most-efficient, forward looking network design principle would not distinguish between analog or digital loops and would not necessarily distinguish between long and short loops.

4. *Order region-wide uniform improvements to OSS, installation intervals and incident-based liquidated damages for non-performance.*

- Firm Order Commitments (FOCs, which provides CLECs the installation date for a loop) should be delivered within 48 hours; loops and sub-loops should be installed within 5 business days of receipt of order; central office collocation and remote terminal access should be provided within 45 days of receipt of order.
- U S WEST’s OSS needs to be improved to provide electronic access to information necessary to provide advanced services like DSL. For instance, CLECs should be provided pre-order access to loop information, including Design Layout Records (“DLRs”). A well-functioning OSS should speed the overall loop and DSL line sharing ordering and installation process.
- Liquidated damages for each missed interval should be the nonrecurring charge (NRC) for that element or service. For each additional late business day, an additional 10% of the NRC should be refunded to the CLEC.

- Rectifying performance throughout the U S WEST region would provide a pro-competitive boost that would help outweigh the harm to competition caused by this transaction.

* * *

Covad believes that implementation of the above conditions would improve competitive conditions throughout U S WEST territories, particularly with regard to the provision of Advanced Services. Other parties are perhaps likely to propose similar or other pro-competitive conditions. As a result, if the Commission elects to proceed with examining conditions for this transaction, the Commission needs to ensure complete public access to and comment on any such conditions prior to adoption.

In particular, Covad believes that it is imperative that the Commission draft its own merger conditions and not permit Applicants (or other parties) to draft legalistic and exception-laden conditions to the Commission for review. To ensure this result, the Commission should consider allowing Commission Staff to release for public comment proposed draft conditions—procedural due process dictates that Applicants not receive “drafts” of these conditions prior to such public release. Commission Staff could then receive public comment on these draft conditions, make appropriate revisions, and then make their recommendation to the full Commission. In the end, the Commission would not be bound by Staff’s recommendation; however, this public review and comment period would afford maximum opportunity to ensure that any such conditions be drafted with as much comment as possible.

IV. CONCLUSION

Applicants have not met their burden of proof. Applicants have sought to avoid a complete and comprehensive competitive analysis of this transaction by arguing that their

merger is “different” from other telecommunications mergers of the past three years because there is not a “material” overlap in the current service offerings of the two companies.

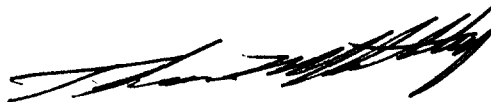
There are two fundamental problems with this argument. First, Applicants provide no factual support for their statements that the overlap in service offerings is not “material.” Rather than submit facts to the Commission that would permit the Commission to draw its own conclusion as to what those facts mean, Applicants have simply made assertions and dare the Commission to conclude otherwise. This is little different than a stubborn child that repeatedly says, “Because” when confronted by an inquiring adult.

The other problem with Applicants’ argument is that it distorts reality. This merger *is* different than the other RBOC mergers since the 1996 Act—because Qwest is an *announced* and *actual* entrant into U S WEST local markets. Pages upon pages of comments, documents, briefings, and testimony were submitted to this Commission and state commissions in the context of the SBC-PacTel, SBC-SNET, SBC-Ameritech, Bell Atlantic-NYNEX, and Bell Atlantic-GTE mergers, all seeking to prove or disprove whether those ILECs were potential entrants into one another’s territory. Tremendous effort was placed in looking for the “smoking gun” document that proved that that maybe Bell Atlantic or NYNEX thought about “crossing the Hudson River” or how serious Ameritech was about selling wireless service in St. Louis.

No effort need be made in this transaction. An arsenal of smoking guns are plastered on the World Wide Web and the Commission’s Electronic Comment Filing System. In the past few years, Qwest has been actively promoting itself as a next-generation, broadband carrier that will provide comprehensive, local and national multimedia broadband services. Its advocacy to the Commission before the merger was announced was consistent with that business plan.

In U S WEST territory, local entry is at its fledgling stage—less than any other RBOC territory. As discussed above, U S WEST's stranglehold on its in-region customers can be explained by, *inter alia*, high loop rates, its refusal to provide DSL line sharing, and its poor loop provisioning record. U S WEST does not need this merger to gain out-of-region long distance customers—but only through this merger can Qwest gain swift local access to U S WEST customers. Rather than bless this merger without further review, the Commission would best serve the public interest by taking swift action to break down the operational and economic bottlenecks to entry in U S WEST territory.

Respectfully submitted,



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